

D.T.E. 02-28

April 22, 2002

Proceeding by the Department of Telecommunications and Energy on its own Motion to
Develop Requirements for Mass Migrations of Telecommunications Service End-Users

ORDER OPENING PROCEEDING AND INITIATION OF MASS MIGRATION
COLLABORATIVE

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I. INTRODUCTION

In two recent proceedings before the Department of Telecommunications and Energy (“Department”), the Department was faced with the imminent discontinuance of telecommunications service by Massachusetts providers that were either engaged in bankruptcy proceedings or successor carriers to bankrupt providers.¹ In both cases, customers of these providers – including medical centers, nursing homes, municipal police and fire departments, foreign consulates, and other businesses – were confronted by imminent discontinuance of service and were migrated to other providers with little or no notice. In those proceedings, the Department had serious concerns about those members of the public that rely on the affected customers for their own convenience, safety, and welfare, and the devastating effects that sudden, unanticipated loss of service would have on both the customers and the public. As a result of these cases, the Department has become aware that procedures are required to ensure, to the greatest extent possible, a seamless migration of large numbers of end-users between competitive local exchange carriers (“CLECs”), or from a CLEC to the incumbent, when a service provider discontinues service in Massachusetts.² The Department notes that the New York Public Service Commission (“NYPSC”) recently adopted guidelines that govern such

¹ See Broadview Networks, D.T.E. 02-14-A (2002), and Network Plus, D.T.E. 02-15, Vote and Order to Open Investigation (February 20, 2002).

² In D.T.E. 02-14-A, at 10-11, the Department established a requirement that carriers provide 60 days advance notice of disconnection to customers. This is a first step in addressing mass migrations, but telecommunications providers and the public will be better served by a more thorough treatment of the subject.

end-user mass migrations.³ In fact, several parties to D.T.E. 02-15 urged the Department to adopt the NYPSC Mass Migration Guidelines within that proceeding.⁴ The Department agrees that the NYPSC Mass Migration Guidelines go far in addressing the Department's concerns, and also agrees that similar requirements in both New York and Massachusetts will benefit providers that operate in both states. However, the Department realizes that there may be aspects of the NYPSC Mass Migration Guidelines that need to be adapted for use in Massachusetts. The Department hereby opens this proceeding to evaluate the NYPSC Mass Migration Guidelines for use in Massachusetts, and, using those guidelines as a basis, to establish requirements governing situations when a telecommunications service provider exits all or part of the Massachusetts market and a significant number of end-users must be migrated to other providers.

³ Proceeding on Motion of the Commission to Examine the Migration of Customers Between Local Carriers, NYPSC Case 00-C-0188, Order Adopting Mass Migration Guidelines (December 4, 2001) ("NYPSC Mass Migration Guidelines"). The NYPSC Mass Migration Guidelines are used when a CLEC is exiting the New York market, or a portion of the market, and has a significant customer base to migrate to other carriers. The NYPSC Mass Migration Guidelines are included with this Order as Attachment 1, and are available at <http://www.dps.state.ny.us/fileroom/doc10880.pdf>.

⁴ See XO Brief at 2 (March 7, 2002); AT&T Reply Brief at 2 (March 15, 2002). The Attorney General of the Commonwealth ("AG") suggested that the Department open a separate investigation to adopt mandatory procedures to govern customer migrations. AG Reply Brief at 2 (March 15, 2002).

II. COLLABORATIVE

In order to address the Department's concerns expeditiously, and to encourage non-adversarial participation and input into the Department's decision in this case, the Department hereby invites interested telecommunications providers to join a Department-sponsored collaborative for the purpose of adapting the NYPSC Mass Migration Guidelines for use in Massachusetts.⁵ The Department will facilitate meetings of the collaborative at the Department offices, with the goal of the collaborative being a set of draft mass migration guidelines – as similar to the New York guidelines as possible – submitted to the Department for its final approval.⁶ Telecommunications providers interested in participating in the collaborative should contact the Department Staff assigned to this proceeding within ten days of this order to coordinate their participation. When the Department receives the draft guidelines from the collaborative, we will begin the adjudicatory phase of this proceeding, allowing all those affected by the issues addressed in the draft guidelines to petition to intervene for the purpose of

⁵ The Department notes that the NYPSC Mass Migration Guidelines were first developed through a collaborative process in New York, and then adopted by the NYPSC, the same process we are proposing here. The Department further notes that several carriers that participated in the New York proceeding are also active in Massachusetts, including Verizon, AT&T, XO, and WorldCom, and the Department anticipates that their participation and familiarity with the New York proceeding would be extremely helpful in this case.

⁶ As the Department seeks to move quickly to establish effective mass migration procedures, the Department will sponsor the collaborative effort only for a limited time. The Department anticipates that, using the NYPSC Mass Migration Guidelines as a starting point, an effective collaborative can compose draft guidelines for Department review by June 1, 2002. If the collaborative effort does not prove to be effective, the Department will disband the collaborative and will accelerate the more traditional adversarial process.

submitting written comments on the draft guidelines. The Department will then issue an order addressing these matters and establishing final requirements with which telecommunications providers must comply when they go out of business, file for bankruptcy, or otherwise terminate service in some or all markets in Massachusetts.

III. ORDER

Accordingly, the Department hereby

VOTES: To open a proceeding to establish requirements for adequate notice and orderly customer transition upon termination of telecommunications service in all or part of the Massachusetts market; and it is

ORDERED: That Department Staff will facilitate an industry collaborative to adapt the NYPSC Mass Migration Guidelines for use in Massachusetts; and it is

FURTHER ORDERED: That the Secretary of the Department shall serve a copy of this Order on the D.T.E. 02-15 service list, and on other telecommunications service providers that have asked to be placed on a general notification list pursuant to 220 C.M.R. § 2.09.

By Order of the Department,

_____/s/_____
James Connelly, Chairman

_____/s/_____
W. Robert Keating, Commissioner

_____/s/_____
Paul B. Vasington, Commissioner

_____/s/_____
Eugene J. Sullivan, Jr., Commissioner

_____/s/_____
Deirdre K. Manning, Commissioner